

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JEFFERY GORMAN,)	
)	
Petitioner,)	
)	
v.)	Civil No. 05-129-B-W
)	
STATE OF MAINE,)	
)	
Respondent.)	

**ORDER AFFIRMING THE
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge filed with the Court on December 7, 2006 her Recommended Decision. The Petitioner filed his objections to the Recommended Decision on December 15, 2006. I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in her Recommended Decision, and determine that no further proceeding is necessary.¹

¹ Mr. Gorman points out that the Magistrate Judge misquoted a portion of his motion for reconsideration to the Maine Supreme Judicial Court, omitting eighteen words. He states that the omission makes his argument "appear non-sensical or even contrary to the argument Petitioner actually made." *Petitioner's Obj. to Magistrate's Recommended Decision* at 2 (Docket # 18) (*Pet. Obj.*). This Court has compared the language in Mr. Gorman's motion for reconsideration with the quotation in the Recommended Decision and agrees that the Recommended Decision omitted the following underlined portion of the motion:

Finally, the Law Court fails to articulate any principled basis for admitting testimonial hearsay evidence where a declarant appears but has no memory of the subject matter and not admitting the same evidence if the declarant invokes a privilege or refuses to testify, or fails to appear at all.

See Recommended Decision at 9 (Docket # 17); *Pet.'s Reply to Respondent's Answer to Pet. for Writ of Habeas Corpus*, Attach. A1 (Docket # 16). Mr. Gorman acknowledges that, despite this misquotation, the Recommended Decision "did correctly set forth the substance of Gorman's central argument..." *Pet. Obj.* at 2. This Court agrees. The misquoted passage does not reflect the Magistrate Judge's misunderstanding of Mr. Gorman's argument. To

1. It is therefore ORDERED that the Recommended Decision of the Magistrate Judge is hereby AFFIRMED.
2. It is further ORDERED that the Petitioner's 28 U.S.C. § 2254 Petition be and hereby is DENIED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 8th day of January, 2007

Petitioner

JEFFERY GORMAN

represented by **CHRISTOPHER K. MACLEAN**
ELLIOTT & MACLEAN, LLP
20 MECHANIC STREET
CAMDEN, ME 04843
207-236-8836
Email: chris@camdenlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Respondent

MAINE, STATE OF

represented by **DONALD W. MACOMBER**
MAINE ATTORNEY GENERAL'S
OFFICE
STATE HOUSE STATION 6
AUGUSTA, ME 04333
626-8800
Email:
donald.w.macomber@maine.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

the contrary, the Magistrate Judge's Recommended Decision extensively discusses and properly rejects Mr. Gorman's central contention.